such finding was amply authorized. And looking to the evidence we find it all to the effect that the note was given in settlement of an indebtedness of Louis P. Doerhoefer to Samuel Dinkelspiel growing out of gambling transactions between them."

The question presented for decision in the above case is a very interesting one upon which the authorities are conflicting. In Raleigh County *v.* Poteet, 74 W. Va. 511, it was held that a bona fide holder could not recover upon a note originally given for a gambling debt. The Court of Appeals of the District of Columbia, has taken a different view of the question and in Wirt *v.* Stubblefield, 17 App. Cas. 283, held that, a holder in due course can recover upon such a note. The New York Law Journal in referring to this question says of the New York decisions:

"In New York there has been no decision by the Court of Appeals on the precise point involved. The decisions of the lower courts are in conflict. The Appellate Division for the Second Department takes the view adopted in West Virginia and holds the note invalid as against the maker, even in the hands of a holder in due course (Sabine *v.* Paine, 166 App. Div. 9). The Appellate Term in the First Department has held the opposite (Oeser *v.* Behrend, 89 Misc., 391)."

Keeping in mind that the Negotiable Instruments Act has for its purpose the free and unhampered circulation of negotiable paper and to that end protects bona fide purchasers for value and without notice it would seem that the District of Columbia court takes the preferable view of the question.

Husband and Wife—Right of Husband to Enjoin "Nagging" by Wife.—In Drake *v.* Drake, 177 N. W. 624, the Supreme Court of Minnesota, held, that the rule that a husband cannot maintain against his wife an action in equity to restrain and enjoin the commission of acts towards him which amount to nothing more than a tort or series of torts, applies to acts and conduct on the part of the wife commonly known as nagging.

The court said in part: "The allegations of the complaint, somewhat indefinite in several respects, taken as a whole, charge acts of misconduct on the part of defendant amounting to what is commonly known and understood as nagging, constituting in law nothing more than a series of personal torts, involving neither a breach of contract nor specific property right. The action then sounds in tort, and that it cannot be maintained seems settled by the decision in Strom *v.* Strom, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, 116 Am. St. Rep. 387. That was a similar action, one for an alleged assault and battery committed by the husband on the wife, and was brought by the wife, and not by the husband, as in the case at bar. The court in disposing of the case recognized and

referred to the common-law disability of either spouse to maintain such an action against the other, and held that in the enactment of the so-called Married Woman's Act (G. S. 1913, sec. 7142), by which many of the common-law disabilities of the wife were removed, and she was placed upon an equality with the husband in respect to the management and control of her separate property, the Legislature did not intend to abrogate the rule of the common law on the subject, by extending to the wife a right of action for a tort committed against her by the husband during coverture. * * *

"The authorities in other jurisdictions are not in harmony, though the statutory provisions upon the subject appear substantially the same in all. A majority in number of adjudicated cases apply the rule followed in this state. Thompson *v.* Thompson, 218 U. S. 611, 54 L. ed. 1180, 30 L. R. A. (N. S.) 1153, 31 Sup. Ct. Rep. 111, 21 Ann. Cas. 921 (there was a dissenting opinion in that case by Mr. Justice Harlan, concurred in by two of his associates); Bandfield *v.* Bandfield, 117 Mich. 80, 40 L. R. A. 757, 72 Am. St. Rep. 550, 75 N. W. 287; Schultz *v.* Christopher, 65 Wash. 496, 38 L. R. A. (N. S.) 780, 118 Pac. 629, 13 R. C. L. 1395. The case of Peters *v.* Peters, 156 Cal. 32, 23 L. R. A. (N. S.) 699, 103 Pac 219, was similar to that at bar, being one by the husband against the wife for assault and battery, and the California supreme court, construing a statute substantially like that of this state, held that it could not be maintained. The contrary was held in Brown *v.* Brown, 88 Conn. 42, 52 L. R. A. (N. S.) 185, 9 Atl. 889, Ann. Cas. 1915D 70, and Fiedler *v.* Fiedler, 42 Okla. 124, 52 L. R. A. (N. S.) 189, 140 Pac. 1022, though the statutes of those states for all practical purposes are the same as in the states where the right of action is denied. We prefer the rule of the Strom case, and think it should be adhered to until such time as the legislature shall deem it wise and prudent to open up a field for marring or disturbing the tranquillity of family relations, heretofore withheld as to actions of this kind, by dragging into court for judicial investigation at the suit of a peevish, fault-finding husband, or at the suit of the nagging, ill-tempered wife, matters of no serious moment, which if permitted to slumber in the home closet would silently be forgiven or forgotten. If that source of litigation is to be opened up at all, it should come about by legislation. Neither husband nor wife is without an appropriate remedy in such matters, where of a character to be redressed by the courts. The divorce courts are open to them when the facts will justify relief of that character, and when the misconduct complained of is of a nature to constitute a crime the criminal laws will furnish adequate protection. But the welfare of the home, the abiding place of domestic love and affection, the maintenance of which in all its sacredness, undisturbed by a public exposure of trivial family disagreements, is so essential to society, demands and requires that no new grounds for its disturbance or dis-

ruption by judicial proceedings be ingrafted on the law by rule of court, not sanctioned or made necessary by express legislation."

Intoxicating Liquor—Unlawful Sale—Jamaica Ginger.—In Commonwealth *v.* Sookey, 128 N. E. 788, the Supreme Judicial Court of Massachusetts held that the proprietor of a retail grocery store who sold in good faith to customers bottles of extract of Jamaica ginger containing 88 per cent. of alcohol for flavoring and medicinal purposes, and so labeled, did not violate Mass. Rev. Laws, c. 100, prohibiting the unlawful sale of intoxicating liquors; the definition of section 2 not including Jamaica ginger, unless shown to be a "beverage." It was further held that the court cannot take judicial notice that extract of Jamaica ginger is in fact an intoxicating beverage, and that it is generally sold and used as such.

The court said in part: "We put aside the discussion of the Prohibition Amendment to the federal Constitution, and the Volstead Act (41 Stat. 305) enacted by Congress to enforce the same, as they were not in effect at the time of the sales in question. Nor is it contended that the earlier War-Time Prohibition Act has any application. See Jacob Ruppert *v.* Caffey, 251 U. S. 264, 40 Sup. Ct. 141, 64 L. Ed. ——. The statute that the defendants were charged with violating is R. L. c. 100, which prohibits the unauthorized sale of intoxicating liquor. It was held in the recent case of Commonwealth *v.* Nickerson, 128 N. E. 273 (Sept. 17, 1920), that this statute 'has not been abrogated by the Eighteenth Amendment and the Volstead Act. The sections under which the complaint was framed against the defendant are still operative and efficacious.' Section 2 provides as follows:

" 'Ale, porter, strong beer, lager beer, cider, all wines, any beverage which contains more than one per cent. of alcohol, by volume, at sixty degrees Fahrenheit, and distilled spirits, shall be deemed to be intoxicating liquor within the meaning of this chapter.'

"Jamaica ginger is not included in this definition, unless it is shown to be a 'beverage'; that is to say, a liquor for drinking. The mere fact that it contains a large percentage of alcohol does not make it 'intoxicating liquor' within the meaning of the statute. There are numerous medical preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia (see R. L. c. 75, § 18; chapter 100, § 17, cl. 3), and many patent and proprietary medicines, toilet and antiseptic solutions, which contain much more than 'one per cent. of alcohol,' but whose use as a beverage is rendered practically impossible by reason of other ingredients. Commonwealth *v.* Mandeville, 142 Mass. 469, 8 N. E. 327; State *v.* Costa, 78 Vt. 198, 207, 62 Atl. 38; Intoxicating Liquor Cases, 25 Kan. 751, 37 Am. Rep. 284.